

NOT FOR PUBLICATION

NOV 19 2007

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCISCO JUAREZ SOSA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-72178

Agency No. A95-297-096

MEMORANDUM^{*}On Petition for Review of an Order of the
Board of Immigration AppealsSubmitted November 13, 2007^{**}

Before: McKEOWN, TALLMAN and CLIFTON, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA") order denying petitioner's third motion to reconsider.

Upon review of the record and petitioner's response to the court's order to show cause, we conclude that the BIA did not abuse its discretion in denying petitioner's motion to reconsider because the third motion to reconsider was

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

numerically barred. *See* 8 U.S.C. § 1003.2(b)(2) (“A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider.”); *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004).

We lack jurisdiction to review whether the BIA should have *sua sponte* reconsidered petitioner’s case despite the numerically barred motion to reconsider because “the decision of the BIA whether to invoke its *sua sponte* authority is committed to its unfettered discretion.” *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002).

We also lack jurisdiction to consider petitioner’s claim, raised in this petition for review, that relies on evidence not previously presented to the BIA. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Petitioner’s motion to proceed in forma pauperis is granted. All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.